Formal Federal Legal Argument Brief

The Recognition Domino

Why the Federal Recognition of the Mississippi Band of Choctaw Indians Compels the Federal Recognition of the Okla Falaya Band of Choctaw Freedmen

Submitted By:	El Haq Malak Bey, Principal Representative, Okla Falaya Band of Choctaw Freedmen, Better World Fund Inc.
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Subject:	Federal Recognition — Treaty-Based Obligation — 7 Stat. 333 (1830) and 14 Stat. 769 (1866)
Authority:	United States v. John, 437 U.S. 634 (1978) | 25 U.S.C. § 71 | 28 U.S.C. § 1505

I. The One-Sentence Argument

At the center of this brief stands a single legal proposition:

> *"The United States cannot recognize the federal trust obligation created by the Treaty of Dancing Rabbit Creek for those who remained in Mississippi, while simultaneously denying that the same treaty — and the additional 1866 Treaty — creates the same obligation for those who marched west under that same treaty relationship."*

This sentence is not a rhetorical flourish. It is a statement of legal impossibility. Every argument in this brief is the unpacking of that impossibility.

II. The Common Origin: One People, One Treaty, One Federal Obligation

Before 1830, there was one Choctaw Nation. One people. One treaty relationship with the United States, dating from the Treaty of Hopewell, January 3, 1786 — the first treaty the United States ever signed with the Choctaw Nation, in which the United States recognized Choctaw sovereignty and established a formal nation-to-nation relationship.

The Treaty of Dancing Rabbit Creek, September 27, 1830 (7 Stat. 333), did not create two different kinds of Choctaw people. It created one removal event that geographically separated one people into two communities. Those who exercised rights under Article XIV and remained in Mississippi became the community that is today the Mississippi Band of Choctaw Indians. Those who made the forced march westward into Indian Territory became the western Choctaw community — and their African-descended members became the Choctaw Freedmen.

Both communities emerged from the same pre-1830 nation. Both carried the same treaty relationship with the United States. The 1830 Treaty did not distinguish between them — it governed both.

III. The Recognition: What the United States Said in 1945 and 1978

In 1945, the United States formally recognized the Mississippi Band of Choctaw Indians as a dependent Indian community under federal trust protection. In *United States v. John*, 437 U.S. 634 (1978), the Supreme Court of the United States unanimously confirmed that recognition, holding:

(a) The Mississippi Band of Choctaw Indians constitutes a dependent Indian community within the meaning of 18 U.S.C. § 1151(b).

(b) The federal government retains a trust relationship with that community regardless of any interruption in formal federal supervision between 1830 and 1945.

(c) Remnant status — the fact that the Mississippi Choctaw community was small, dispersed, and without continuous federal supervision for over a century — does not extinguish the federal trust obligation.

(d) The foundation of that trust obligation is the Treaty of Dancing Rabbit Creek, 1830.

In making these holdings, the United States made an admission that it cannot selectively apply. It admitted that:

First — the 1830 Treaty created a real and permanent federal trust obligation.

Second — that obligation attaches to the community, not merely to those formally enrolled or administratively recognized at any given moment.

Third — time, neglect, and administrative interruption cannot extinguish a treaty-based federal obligation.

Fourth — a remnant community does not need to prove its existence fresh in each generation. The treaty relationship is permanent. The obligation runs forward in time until it is performed.

IV. The Domino: Why That Admission Compels This Recognition

The moment the United States made those four admissions — in 1945 and confirmed in 1978 — it set a legal domino in motion that it cannot stop.

The western Choctaw community — the Choctaw Freedmen, the Okla Falaya Band — came from the same pre-1830 nation. They were governed by the same 1830 Treaty. They carried the same treaty relationship into Indian Territory that their Mississippi kin carried into Mississippi.

If the 1830 Treaty created a permanent federal trust obligation for those who stayed in Mississippi — and the Supreme Court unanimously said it did — then the same 1830 Treaty created the same permanent federal trust obligation for those who marched west. The logic is identical. The treaty is identical. The nation of origin is identical. The federal trust relationship is identical.

The only difference between the two communities is geography — which direction they walked in 1830. The federal government has never explained, in any statute, any regulation, or any court opinion, how the direction a Choctaw person walked in 1830 determines whether the United States honors its treaty obligations to them. No such explanation exists. Because none is possible.

V. The Asymmetry: Why the Western Claim Is Stronger, Not Weaker

The Mississippi Band of Choctaw Indians' federal recognition rests on a single treaty — the Treaty of Dancing Rabbit Creek, 1830. That treaty alone was sufficient to compel recognition.

The Okla Falaya Band of Choctaw Freedmen's claim rests on that same 1830 Treaty — plus an additional, explicit, specific treaty: the Treaty with the Choctaw and Chickasaw, April 28, 1866 (14 Stat. 769). Article 3 of the 1866 Treaty granted the Choctaw Freedmen by name: full citizenship rights within the Choctaw Nation, the right of suffrage, forty (40) acres of land from the public domain, and a share of the Choctaw public school fund.

The comparison is as follows:

Community	Treaty Foundation	Enumerated Rights Granted by Name
Mississippi Band of Choctaw Indians	1830 Treaty of Dancing Rabbit Creek (one treaty)	General community recognition — no individual rights enumerated by name
Okla Falaya Band of Choctaw Freedmen	1830 Treaty of Dancing Rabbit Creek *PLUS* 1866 Treaty, Art. 3 (two treaties)	Citizenship, suffrage, 40 acres, school fund — all enumerated individually and by name

The community with one treaty was recognized. The community with two treaties — the second of which contains more specific, more explicit, and more enumerated rights than the first — has been denied recognition for 160 years. That is not a legal outcome. It is a legal impossibility. The

government recognized the half of the community with less treaty documentation and has refused to recognize the half with more.

Under 25 U.S.C. § 71, neither treaty can be abrogated by subsequent federal statute. Both are permanent. Both are supreme law. The 1866 Treaty's enumerated rights — citizenship, land, school fund — have been unperformed since July 10, 1866. The breach has run 160 years without cure.

VI. The Three Choices: Why No Court Can Deny This Without Undoing Itself

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When this argument is placed before a federal court or federal agency, there are exactly three possible responses:

Choice One: Rule that the recognition of the Mississippi Band of Choctaw Indians in 1945 was wrong — that the 1830 Treaty did not create a permanent federal trust obligation. This would require overturning *United States v. John*, 437 U.S. 634 (1978), a unanimous Supreme Court decision. The federal government will never argue this. No court will reach this conclusion.

Choice Two: Rule that the 1830 Treaty created a federal trust obligation for those who remained in Mississippi but not for those who marched west — that the same treaty has different legal force depending on which direction a Choctaw person walked in 1830. No legal principle supports this conclusion. It has no basis in the treaty's text, in the law of nations, in federal Indian law, or in any Supreme Court precedent. No judge can write this opinion without it being immediately reversed on appeal.

Choice Three: Acknowledge that the same treaty obligation that compelled the recognition of the Mississippi Band of Choctaw Indians compels the recognition of the Okla Falaya Band of Choctaw Freedmen — and that the additional 1866 Treaty makes that obligation more explicit, more specific, and more enforceable than the 1830 Treaty alone.

There is no fourth choice. The United States must either undo what it did in 1945, contradict itself without legal basis, or acknowledge what it has owed since 1866.

VII. The Moral Foundation: The Right of the Firstborn

The legal argument above has a moral dimension that the law itself demands be acknowledged.

Deuteronomy 21:15–17 provides:

> *"If a man has two wives, the one loved and the other unloved, and both the loved and the unloved have borne him children, and if the firstborn son belongs to the unloved, then on the day when he assigns his possessions as an inheritance to his sons, he may not treat the son of the loved as the firstborn in preference to the son of the unloved, who is the firstborn, but he shall acknowledge the firstborn, the son of the unloved, by giving him a double portion of all that he has, for he is the firstfruits of his strength. The right of the firstborn is his."*
>
> **— Deuteronomy 21:15–17**

The Choctaw Freedmen are the firstborn. They marched west into Indian Territory. They cleared the land. They built the schools. They raised the children of the Nation. They were the firstfruits of the Choctaw Nation's strength in Indian Territory.

On the day the United States government divided the Nation's inheritance through the Dawes Commission in 1898, it did precisely what Deuteronomy 21 forbids: it acknowledged the children in Mississippi and disinherited the children who walked west. It recognized one branch of the family and denied the other.

The father has acknowledged the unloved wife's children in Mississippi. He cannot pretend he has no obligation to her children who walked west. The law — both the law of Moses and the law of the United States — says the right of the firstborn is his. It does not expire. It does not diminish. It is due.

VIII. Conclusion

The federal recognition of the Mississippi Band of Choctaw Indians is not a ceiling on the United States' treaty obligations. It is a floor — the minimum acknowledgment of what the 1830 Treaty requires. The Okla Falaya Band of Choctaw Freedmen stand on that same floor, holding in addition the explicit enumerated rights of the 1866 Treaty, and asking the United States to perform what it promised 160 years ago.

The Recognition Domino has already fallen. The United States set it in motion in 1945. The Supreme Court confirmed it in 1978. All that remains is for the federal government to follow the domino to its only lawful conclusion:

> *The Okla Falaya Band of Choctaw Freedmen — the Long People — are recognized. The obligation is real. The double portion is owed. The right of the firstborn is his.*

Respectfully submitted,

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IX. Legal Authorities Cited

Treaty of Hopewell, January 3, 1786

First treaty between the United States and the Choctaw Nation. Established the foundational nation-to-nation treaty relationship.

Treaty of Dancing Rabbit Creek, September 27, 1830 (7 Stat. 333)

Foundation of both the MBCI recognition and the Okla Falaya Band's treaty claim.

Treaty with the Choctaw and Chickasaw, April 28, 1866 (14 Stat. 769), Article 3

Enumerated rights of the Choctaw Freedmen: citizenship, suffrage, 40 acres, school fund.

United States v. John, 437 U.S. 634 (1978)

Unanimous Supreme Court holding that the MBCI is a dependent Indian community and that the 1830 Treaty creates a permanent federal trust obligation surviving interruption.

25 U.S.C. § 71

No treaty made prior to March 3, 1871 may be abrogated by subsequent federal statute.

Indian Tucker Act, 28 U.S.C. § 1505

Jurisdiction for Indian tribe claims against the United States for unperformed treaty obligations.

Barron v. Mayor and City Council of Baltimore, 32 U.S. (7 Pet.) 243 (1833)

The Constitution was ordained and established by the people of the United States for themselves. The Choctaw were not those people — they were sovereign treaty partners. Domestic plenary power cannot reach sovereign treaty rights.

United States v. Nice, 241 U.S. 591 (1916)

U.S. citizenship is not incompatible with tribal existence or continued guardianship. The two statuses coexist.

Morton v. Mancari, 417 U.S. 535 (1974)

Indian rights are political classifications, not racial ones. They cannot be dissolved by domestic anti-discrimination law.

Indian Citizenship Act of 1924, 43 Stat. 253 (8 U.S.C. § 1401(b))

U.S. citizenship granted additively — without extinguishing or repealing any treaty right.

Deuteronomy 21:15–17

The right of the firstborn is his.